

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF SEATTLE,

Defendant.

No. 2:12-cv-01282-JLR

**UNITED STATES' UPDATE ON THE
STATUS OF THE CITY OF SEATTLE'S
SUSTAINMENT OF COMPLIANCE WITH
THE TERMS OF THE CONSENT DECREE**

I. INTRODUCTION

The Sustainment Plan (Dkt. 444)¹ represents the Parties, the Monitoring Team, and the Court's agreement regarding the measures the City must take to demonstrate that it has sustained compliance for the two year period required by the terms of this case's governing document, the Consent Decree. One requirement of the Plan is that the Parties and the Monitoring Team provide a "general overall update [to] the Court on the current status of progress and sustainment of required Consent Decree reforms" in February 2019. *See* (Dkt. 444-1) at 29. At this time, the United States notifies the Court that since March 2018, the City has met all required deadlines

¹ Approved by the Court on March 13, 2018. *See* (Dkt. 448).

1 set forth in the Sustainment Plan, has worked in good faith with the United States and the
 2 Monitoring Team to comply with all requirements of the Consent Decree, and has demonstrated
 3 sustained compliance which each of the areas evaluated pursuant to the plan's deadlines. The
 4 specifics of these actions are set forth in more detail below and provide the United States with
 5 confidence that the City can, if it continues to devote the resources and dedication to reform that
 6 it has shown so far, demonstrate its fulfillment of the Consent Decree requirements by January
 7 2020. Until that time, and for the remainder of the time that the Consent Decree is in place, the
 8 United States will continue to monitor and assess the City's fulfillment of those requirements
 9 with diligence and scrutiny.
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12 **II. HISTORY OF THE SUSTAINMENT PERIOD TO DATE**

13 **A. Phase I of the Consent Decree – Reaching Full and Effective Compliance**

14 The Consent Decree required reforms to the Seattle Police Department ("SPD")'s
 15 policies and practices to correct an alleged pattern or practice of unconstitutional policing. *See*
 16 (Dkt. 3-1) (calling for reforms related to use of force, crisis intervention, stops and detentions,
 17 bias-free policing, supervision, and the Office of Professional Accountability (now the Office of
 18 Police Accountability ("OPA")). After entry of the Consent Decree in 2012, the City of Seattle
 19 commenced (with assistance of the Monitoring Team and the United States) making changes to
 20 policies, practices, and training to conform with these requirements. During Phase I, the Parties
 21 and the Monitoring Team agreed to assess SPD's compliance with the Consent Decree using
 22 "Compliance Reviews and Audits." *See id.* at ¶¶ 183-185 (as opposed to the Consent Decree's
 23 alternate compliance mechanism, "Outcome Assessments"). Accordingly, the Monitoring Team
 24 and the United States conducted ten assessments covering each of the general topic areas of the
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1 Consent Decree (as well as a re-assessment of one assessed area that was not found in initial
2 compliance) for various time periods falling between July 2014 and January 2017. *See* (Dkts.
3 231, 247, 235, 259-1, 272, 351, 360, 374, 383, and 394). Through these assessments, the
4 Monitoring Team and the United States ultimately concluded that the City of Seattle had
5 demonstrated compliance with all of the requirements of the Consent Decree. *Id.* (finding each
6 area in “initial compliance”). On that basis, the Court found the City of Seattle in “full and
7 effective compliance with the Consent Decree.” *See* (Dkt. 439).

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10 **B. Phase II of the Consent Decree – Demonstrating Sustained Compliance**

11 The City’s obligations under the Consent Decree did not end when the City initially
12 obtained full and effective compliance. Under the agreement, before the Consent Decree can
13 terminate, the City of Seattle must demonstrate that it has sustained that compliance for a period
14 of two years. The Sustainment Plan, approved by the Court in March 2018, sets forth the
15 requirements and deadlines relevant to that demonstration. *See* (Dkt. 444-1). During this period,
16 the City of Seattle takes the lead in self-assessing each of the topic areas covered by the Consent
17 Decree. This means that the City drafts a methodology that will govern the manner by which the
18 topic area is evaluated or audited and then conducts an assessment consistent with that
19 methodology. The Monitoring Team and the United States play an active role in monitoring
20 these efforts – the Monitoring Team and the United States review, comment, and ultimately
21 approve the methodology proposed by the City only if each feels that it satisfies the rigorous and
22 statistically appropriate requirements of assessing compliance with that topic area. Further, the
23 Monitoring Team and the United States review randomized samples of documents from the
24 audits conducted by the City of Seattle to verify the results of the City of Seattle’s audit. If the
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1 Monitoring Team or the United States reach different conclusions than the City regarding the
2 results of any of these audits, the Monitoring Team and the United States both have the ability to
3 file a “Supplemental Brief” flagging such disagreement with the Court. As described in more
4 detail herein, such filings have not been necessary as the Monitoring Team and the United States
5 have been in agreement that the City has demonstrated sustained compliance in each of the areas
6 assessed thus far.
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8 **C. Status of the City of Seattle’s Sustainment Audits to Date**
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10 Since the Court’s approval of the Sustainment Plan in March 2018, the City of Seattle has
11 been required to complete self-assessments in several topic areas under the Consent Decree:
12 (1) Type I Use of Force Reporting & Investigations; (2) Type II Use of Force Reporting &
13 Investigations; (3) General Supervision; and (4) Crisis Intervention. *See* (Dkt. 444-1). The City
14 of Seattle timely submitted to the Monitoring Team and the United States draft methodologies
15 and draft audit reports for each of these areas. Moreover, for the reasons provided below (and
16 detailed in each audit report filed with the Court), the City of Seattle demonstrated sustained
17 compliance in each of these areas to the satisfaction of the Monitoring Team and United States.
18 Notably, in each of these assessed areas, the Monitoring Team and United States identified issues
19 that, while not rising to the level of non-compliance, warrant further attention and review by the
20 City of Seattle. The Monitoring Team and United States identified these issues in the
21 “Validation – DOJ and Monitoring Team Review” section found at the end of each of the City’s
22 audit reports. It is the United States’ expectation that the City will review and address these
23 issues in advance of the City’s second round of self-assessments during the Sustainment Period.
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1 1. Type I and Type II Use of Force Reporting and Investigation

2 The City of Seattle opted to combine its self-assessments of SPD's reporting and
 3 investigation of officer's use of lower level, "Type I and Type II," uses of force (primarily
 4 defined as force that involves either transitory pain, the complaint of pain, or force that causes or
 5 is reasonably expected to cause less than great or substantial bodily injury). *See* (Dkt. 497-1).
 6 This assessment covered paragraphs 100-111 of the Consent Decree and assessed, among other
 7 things, whether SPD officers appropriately reported and documented Type I and II uses of force
 8 and whether supervisors appropriately reviewed and investigated that force, including making
 9 appropriate referrals to address problems, as warranted. *Id.*

10 SPD conducted its self-assessment of these areas by leveraging the work of the Force
 11 Review Unit ("FRU") and Force Review Board ("FRB"), whose existing mandate includes
 12 reviews of each of these issues. *Id.* Instead of selecting an audit sample, SPD opted to review all
 13 uses of force occurring between January 1, 2018 and June 30, 2018 for Type Is and all uses of
 14 force occurring between January 1, 2018 and March 30, 2018 for Type IIs. *Id.* SPD found that
 15 92.8% of the investigation files for Type I and II uses of force in the sample period were
 16 complete and thorough (an improvement from the 86% identified by the Monitor in Phase I).
 17 After reviewing this and other data and information (discussed more fully in the audit report),
 18 SPD concluded that it had sustained compliance with this topic area.

19 The United States and the Monitoring Team's reviews validated this assertion. In
 20 addition to providing guidance and ultimate approval for the methodology governing SPD's
 21 audit, the United States and the Monitoring Team also conducted their own sampling of Type I
 22 and II uses of force from the audit period. Specifically, the United States and the Monitoring
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1 Team reviewed 10% of the Type I uses of force and 20% of the Type II uses of force from SPD's
 2 audit. After reviewing these cases, the United States and the Monitoring Team concluded,
 3 among other things, that the "overall quality of SPD's review and investigation was high and the
 4 care that officers and their chain of command took in writing reports, reviewing information,
 5 ensuring complete reporting, probing issues of concern, and addressing shortcomings was
 6 impressive." *Id.* at 23. As a result, the United States and the Monitoring Team concurred that
 7 SPD has demonstrated sustained compliance in this topic area. However, the United States and
 8 Monitoring Team also offered up technical assistance for areas of improvement, such as
 9 clarifying the rules around delegation of review authority and articulating the sufficiency (or lack
 10 thereof) of the Lieutenant-level review. The next (and potentially last) audit and validation of
 11 this topic area is scheduled to occur by July 2019 and October 2019 (though SPD may opt to
 12 combine these two use of force investigation and review audits again, in which case the deadline
 13 for filing would be combined).

17 2. General Supervision

18 The City of Seattle audited paragraphs 153-156 of the Consent Decree through an audit,
 19 filed as the "Supervision Report."² *See* (Dkt. 497-2). This audit covered the period from the
 20 Court's declaration of full and effective compliance (January 10, 2018) to June 30, 2018. *Id.*
 21 The audit addressed the specific supervisory mandates of paragraphs 153-156, namely:
 22 (1) adequacy of supervision (*i.e.* whether SPD deploys enough trained first-line supervisors to
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 26 ² Because SPD opted to use all data in the sampled period, it chose to rename the audit a "report" to be
 27 more semantically accurate. For purposes of discussing SPD's work relative to the requirements of the
 28 Sustainment Plan, which calls this work "audits," we have continued to refer to it as an audit throughout.
 This difference in nomenclature may apply to other "audits" as well.

1 respond to and investigate all uses of force); (2) unity of command (*i.e.* whether SPD provides
2 first-line supervisors that work the same days and hours as officers they supervise); and (3)
3 adequacy of acting sergeant training (*i.e.* whether officers serving as acting sergeants for more
4 than 60 days received appropriate sergeant-level training). *Id.*; (Dkt. 3-1) at 48-49.

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6 With respect to the adequacy of supervision, the City examined supervisor work and
7 reporting on Type I and II uses of force during the study period. *See* (Dkt. 497-2). From this
8 data, the City was able to demonstrate that supervisors were routinely completing all of the
9 investigation and reporting requirements related to use of force. *Id.* at 10. Indeed, they did not
10 find any cases in which a supervisor failed to screen a use of force and they confirmed that
11 supervisors responded to the scene of all Type II uses of force during the study period. *Id.*
12 Accordingly, the City was able to conclude that SPD is employing enough first-line supervisors
13 to investigate uses of force. *Id.* at 11. With respect to unity of command, the City noted that
14 during the period of the United States' investigation, a different patrol staffing approach was in
15 place in which officers did not consistently report to the same supervisor. *Id.* That approach has
16 since changed and the City was able to examine data from its Data Analytics Platform ("DAP"),
17 cross-referenced with roll calls sheets, to confirm that all officers within a squad now have the
18 same scheduled work week and report to the same supervisor. *Id.* at 11-12. Finally, the City was
19 able to query its training data to demonstrate that 100% of all officers serving as acting sergeants
20 for more than 60 days received sergeant training within 90 days of assuming that position. *Id.* at
21 14-15. Accordingly, the City demonstrated compliance with paragraphs 153-156 of the Consent
22 Decree.
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1 The United States and the Monitoring Team validated the work and conclusions of this
2 audit by consulting with the City regarding the data to be queried and by cross-referencing the
3 outcome of other audits (for instance the Type I and Type II Force Reporting and Investigation
4 Audit, which demonstrated SPD's compliance with supervisory requirements related to
5 investigating and reporting force). The United States and the Monitoring Team will continue
6 evaluating other audits during Phase II for indications of lack of inadequate supervisory staffing
7 or training. At this time, we have not seen indications of either. The next (and potentially last)
8 General Supervision Audit is currently scheduled to occur by November 2019.
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11 3. Crisis Intervention

12 The City of Seattle audited paragraphs 130-137 of the Consent Decree through a Crisis
13 Intervention Audit. *See* (Dkt. 511). This audit covered the time period from January 1, 2017, to
14 June 30, 2018. *Id.* The audit examined requirements related to crisis intervention training,
15 staffing and deployment of Crisis Intervention Certified Officers ("CIT officers"), disposition
16 and outcome of crisis calls, consultation with a Crisis Intervention Committee ("CIC") (made up
17 of mental health and social work professionals), analysis of crisis data, and a qualitative
18 evaluation of uses of force involving persons in crisis. *Id.* at 4-5.
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21 Through the audit, the City was able to verify its compliance with the Consent Decree
22 mandates in each of these areas. Among other things, the audit verified that the City provides at
23 least 8 hours of crisis-intervention related training to all of its officers, trains dispatchers how to
24 identify and dispatch crisis-related calls, and provides 40 hours of crisis intervention training for
25 CIT-certified officers. *Id.* at 5-6. And, as of the study period, 73% of patrol officers are CIT-
26 certified. In addition, the City confirmed its regular consultation with the CIC, which includes
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1 participants from local hospitals, mental health service providers, and social service providers.
2 *Id.* at 39-40. Further, the City demonstrated that approximately 80% of SPD's 15,000 contacts
3 involving someone in crisis involved a CIT certified officer. *Id.* at 40-41. Only 1.7% of those
4 contacts resulted in the use of any reportable force. *Id.* Moreover, SPD's Force Investigation
5 Unit and Force Investigation Board found that officers' use of force was necessary, reasonable,
6 and appropriate and, when officer action violated policy or suggested the need for additional
7 training, supervisors made appropriate referrals. *Id.* at 25.
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10 The United States and the Monitoring Team validated the results of this audit by
11 consulting on and approving the methodology used, conducting independent interviews of Crisis
12 Response Unit Staff, and by conducting an independent assessment of a randomly generated
13 sample of use of force cases involving people in crisis during the study period. *Id.* at 39-41.
14 Specifically, the United States and the Monitoring Team examined six Type I case files, five
15 Type II force case files, and three Type III case files (representing all of the Type III uses of
16 force against people in crisis during the 18 month study period). *Id.* at 40. The United States
17 and the Monitoring Team ultimately concluded that these case files supported SPD's finding of
18 compliance with the requirements of the Consent Decree, and noted that in the few instances
19 where officer behavior was at odds with SPD policy or training, supervisors made appropriate
20 referrals to address these concerns. *Id.* The United States and the Monitoring Team also offered
21 technical assistance regarding crisis intervention, including: focusing training on the designation
22 of a tactical leader and tactical positioning, particularly in crisis-related events; ensuring that an
23 officer's degree of crisis training is clear in the force review file; and training the Hostage
24 Negotiation Team in a manner consistent with the Crisis Intervention Certification training to
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1 assist in their encounters with people in crisis. There is no additional Crisis Intervention Audit
2 scheduled, however, a Comprehensive Use of Force Audit is scheduled to occur by October
3 2019, which will include in-depth evaluations of SPD's uses of force in cases involving persons
4 in crisis.
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6 **D. Update on the Status of Other Requirements of the Sustainment Plan to Date**

7 The City has also met the rest of its obligations under the Sustainment Plan to date,
8 including:
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10 1. Policy Reviews. SPD timely reviewed its existing policies on Bias Free Policing
11 (Dkt. 451-1 at 25), Crisis Intervention (Dkt. 451-1), Use of Force (Dkts. 471-1 to 471-3 and 500-
12 1 to 500-5), Early Intervention System (Dkt. 502-1), and Stops and Detentions (Dkt. 461-1) since
13 March 2018, as required by the Sustainment Plan/Matrix. *See* (Dkt. 444-1). SPD also timely
14 shared draft policy changes in these areas with the United States and the Monitoring Team and
15 timely filed such proposed changes with the Court. Each have been approved by the Court and
16 have gone into effect.
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18 2. Outcome Reports. SPD timely filed Outcome Reports with the content mandated
19 by the Sustainment Plan/Matrix regarding Community Engagement (Dkt. 452-1), Stops &
20 Detentions (Dkt. 458-1), Crisis Intervention (Dkt. 495-1), and Force Outcomes (Dkt. 442-1).
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22 3. Quarterly Reports. SPD timely filed Quarterly Reports with the content mandated
23 by the Sustainment Plan/Matrix on July 31, 2018 (Dkt. 470), October 31, 2018 (Dkt. 497), and
24 January 31, 2019 (Dkt. 523).
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III. CONCLUSION

For the foregoing reasons, the United States advises the Court that, since March 2018, the City has met all required deadlines set forth in the Sustainment Plan, has worked in good faith with the United States and the Monitoring Team to comply with all requirements of the Consent Decree, and has demonstrated sustained compliance with each of the areas evaluated pursuant to the plan's deadlines.

DATED this 28th day of February, 2019.

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CERTIFICATE OF SERVICE

I certify that on the 28th day of February 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record:

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DATED this 28th day of February, 2019.

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